or by prescription. *R.R.* v. *Esterle*, supra; *Union Trust Co.* v. *Cuppy* (1882) 26 Kan. 754; *Galway* v. *Ry.* (1891) 128 N. Y. 132; *Parker* v. *R.R.* (1896) 119 N. C. 677; *Nichols* v. *R.R.* (1897) 120 N. C. 495; *Beach* v. *R.R.* (1897) 120 N. C. 498; *Lassiter* v. *R.R.* (1900) 126 N. C. 509.

RELIEF UNDER MISTAKES OF LAW.—The recent case of *Norwood* v. *Railroad Co.* (Ala. 1906) 42 So. 683, brings up a question which has been much discussed (see essays of Evans, D'Aquesseau and Vinnius, 2 Evans' Pothier 320–387) and to which no universally accepted answer has been given, 5 COLUMBIA LAW REVIEW 366; Pom. Eq. Jur. §§ 838–851; and see 55 Am. St. R. 494, note, namely, as to the redress which should be given for mistakes of law. The weight of decisions both in England and in this country is undoubtedly committed to the general proposition that no relief will be given, but the older English decisions both in law, *Hewer* v. *Bartholomew* (1597) Cro. Eliz. 614; *Bonnel* v. *Foulke* (1657) 2 Sid. 4; *Ancher* v. *Bank of England* (1781) Doug. 615; *Bize* v. *Dickason* (1786) 1 T. R. 285, and in equity, *Broderick* v. *Broderick* (1713) 1 P. Wms. 239; *Onion* v. *Tyser* (1716) Id. 343; *Pusey* v. *Deshourie* (1734) 3 P. Wms. 316; *Evans* v. *Llewellyn* (1787) 2 Bro. Ch. 150, and not a few of the recent decisions in the United States take an opposite position. *Remington* v. *Higgins* (1880) 54 Cal. 620; *Brock* v. *Weiss* (1882) 44 N. J. L. 241; *Lammont* v. *Bomly* (Md. 1825) 6 H. & J. 500; *Lawrence* v. *Beaubein* (S. C. 1831) 2 Bailey 623. The general proposition is so honeycombed with exceptions, *Cooper* v. *Phibbs* (1867) L. R. 2 H. L. 149, 170; *Morgan* v. *Dod* (1877) 3 Colo. 551; *Boltarff* v. *Lewis* (1903) 121 Ia. 27; *Sparks* v. *Pittman* (1875) 51 Miss. 511; *Bailey* v. *Insurance Co.* (1882) 13 Fed. 250, and evaded by quibbles, *Hunt* v. *Rousmanier* (1823) 8 Wheat. 174, 211, that its usefulness as a rule of law is greatly impaired. It was first suggested in *Lowry* v. *Bourdieu* (1780) Doug. 481, where Buller, J., said, "if the law was mistaken the rule applies *ignorantia juris non excusat.*" That case was decided, however, on the ground that the parties were in *pari delicto;* and it was not until *Bilbie* v. *Lumley* (1802) 2 East 469, that the rule was actually laid down. Plaintiff's counsel in that case, being unable to cite an instance of recovery for money paid under a mistake of law, Lord Ellenborough said that he knew of only one, where there was such an intimation, and that that was a doubtful case, while in *Lowry* v. *Bourdieu* an action for money paid under mistake of law was disallowed. It is evident that his decision was based upon an incorrect interpretation of the earlier authorities.

It seems probable that Chancellor King pointed out the original use of the maxim *ignorantia juris non excusat,* though he may not have correctly stated its application in his day, when he said in *Lansdowne* v. *Lansdowne* (1730) Mos. 364, that it had reference to pleas in excuse of crimes only. See Doct. & Stud., Ch. 44. It it natural that in the development of law the term should be used as a defense in civil actions; and finally be thought to apply universally, and through a careless dictum and an ill considered opinion come to be translated "all persons are bound to know the law." It is believed that such a development was sound so long as the maxim was confined to defenses. For where one

has through mistake transgressed the law and invaded the right of another it is just that the transgressor and not the innocent party should suffer. But where one has, through mistake of law, injured himself and benefited another to whom he owed no such duty, justice requires no denial of relief. Keener, Quasi-Contracts 87 et seq. The only justification for the denial generally adhered to is public policy. But the objections commonly urged, that the granting of relief in such cases would increase litigation unduly, would render the law uncertain, or would encounter a difficulty of proof, *Hardgree* v. *Mitchum* (1874) 51 Ala. 151, are without serious merit, as reasons why the law should not be called upon to prevent injustice. Evans' Pothier (1826) 340; Keener, Quasi Contracts, supra; *Culbreath* v. *Culbreath* (1849) 7 Ga. 64; *Mansfield* v. *Lynch* (1890) 59 Conn. 320. The excuse of policy finds by far its strongest ground in the class represented by *Norwood* v. *Railroad Co.*, supra, where the refusal is connected with the attempt to reopen or renew court proceedings.

UNIFORMITY OF ASSESSMENT IN OCCUPATION TAXES.—Under Constitutions either silent upon the assessment of occupation taxes or providing that "all taxes shall be uniform upon the same class of subjects," the power of the legislature to classify occupations is unquestioned. *Singer Mfg. Co.* v. *Wright* (1895) 97 Ga. 114; *Walcott* v. *People* (1868) 17 Mich. 68. Fixing a basis of such classification is a purely legislative function and not within the province of the courts, *Commonwealth* v. *Canal Co.* (1888) 123 Pa. 594, though if wholly arbitrary and unreasonable, the courts may interfere. *Seabolt* v. *Commissioners* (1898) 187 Pa. 318; *State* v. *Western U. T. Co.* (1882) 73 Me. 518. The classes being established the question of uniformity within them, *State* v. *Montgomery* (1899) 92 Me. 433, is judicial. *City of Aurora* v. *McGanum* (1897) 138 Mo. 38. Whether an apparent discrepancy in the operation of a tax, therefore, is due to the basis of classification, or simply to the operation of the act within a given class, is important in determining the attitude the court should take in passing upon its constitutionality.

Classification need not be based upon essential differences in the nature of the subjects taxed, but may be based upon the want of adaptability of the various subjects to the same method, or even upon well-grounded considerations of public policy. *Commonwealth* v. *Canal Co.*, supra. As long as it is based upon real distinctions and not irrelevant ones as a cloak to discrimination it is valid. *Majorin* v. *Trust Co.* (1897) 170 U. S. 283; *Rosenbloom* v. *Nebraska* (1902) 64 Neb. 348. If the power of classification is based upon consideration as broad as these, it is evident that in certain cases it may be difficult to determine just what the basis of classification is. In occupation taxes, it is usual to classify according to the kind of business. The classification may be pushed further and it has been held that different phases of the same kind of business may give rise to different classes. *City of Atlanta* v. *Jacobs* (1906) 125 Ga. 523; *Singer Mfg. Co.* v. *Wright*, supra; *State* v. *Montgomery*, supra. If the act provides for a different rate of taxation or basis of assessment on several subjects, the classification is clear.